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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,413	09/28/2001	George G. Pappas	LUM 180	4358

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/966,413

Applicant(s)

PAPPAS, GEORGE G.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-22 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 11/05/2004 is acknowledged.

Election/Restrictions

2. This application contains claim 25 drawn to an invention nonelected with traverse in the reply filed 4/23/2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1, 3-13, 16, 17, and 24 are rejected under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,842,850 to Pappas ("Pappas") (cited by applicant in IDS filed 12/20/2002).

Pappas discloses in Figure 13 a freestanding candle (110) having a wick (84) supported by a fuel body along a longitudinal wick axis, a substantially plate/sheet (114, see Fig. 13) attached to the fuel body in proximity to a lower end of the wick, and an upright wick support (116) contacting the plate/sheet and holding the lower end of the wick. The plate/sheet (114) is

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described as being mounted/attached to the bottom of candle (110) and is therefore regarded as “joined” (see col. 5 lines 14-15 and lines 45-58). The plate is not specifically termed “flame-resistant sheet,” but is described as being made of either a combustible or noncombustible material (see col. 5, lines 50-51), and functions as an equivalent alternative to the floor (138) shown in Figure 14. This lower plate (114) and the floor (138) each serve the purpose of preventing molten fuel, which extinguishes the flame, from flowing out from under the candle (see col. 6, lines 4-8). Therefore, the examiner considers that when the plate is not intended to melt with the candle, the plate would inherently have some measure of flame resistance and meets applicant’s recitation of a flame-resistant sheet.

In regard to the recitation of claim 1 that the wick support is attached to the sheet, the examiner acknowledges that Figure 13 of Pappas shows the wick support (116) attached to a pedestal (112), which is not considered part of the plate/sheet (114). The pedestal functions as one mechanism for raising the wick above the fuel to starve the candle of fuel and extinguish the flame (see col. 4, lines 30-32). However, Pappas indicates that this function may also be performed through the use of a taller wick support (see col. 4, lines 2-22 and Figs. 2-4, 9 and 10). The examiner considers that a person of ordinary skill in the art would reasonably recognize that in view of this prior art teaching of performing the alternative equivalent function extinguishing a candle flame through the use of a taller wick support, the pedestal of Figure 13 may be eliminated resulting in the wick support being attached directly to plate/sheet (113).

In regard to claims 3-9, in Figures 7-12 Pappas teaches several forms that the wick support may take including in Figure 7 one that is sealingly bonded to its support layer by means of a plug (24) forming a liquid fuel flow barrier that also functions to form a support that

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is formed *in situ* unitarily with the wick. This plug forms a flame resistant agent at the lower end of the wick (see col. 3, lines 38-48) and is attached to its support by adhesives (see col. 4, lines 38-41). While Pappas does not specify in what manner the plate (114) is joined/mounted to the candle (110), the examiner considers that a person of ordinary skill in the art would recognize that, as adhesives (such as those attaching plug 24 to its support) are known as a means of attachment in the candle art, it would be simply a matter of obvious design choice to select an adhesive for joining/mounting the plate (114) to the candle (110) pictured in Figure 13.

In regard to claims 11 and 12, Pappas further teaches that the wick support is high enough (i.e. at least half an inch) to prevent a candle fire (see col. 3, line 65 through col. 4, line 19).

In regard to claim 16, the plate/sheet of Pappas is shown mounted/joined to the bottom of the candle as illustrated in applicant's figures and as recited as a limitation in applicant's claim 1. Claim 16 includes a further limitation that this sheet is imbedded within the candle body. Applicant's Figures 19 and 20 show a sheet imbedded within a candle body but do not show the sheet joined to the bottom surface of the candle as required by applicant's claim 1. Accordingly, the examiner considers that applicant's other Figures showing a sheet joined to the bottom of the candle (e.g. applicant's Fig. 1) must also show a sheet that is "imbedded within a fuel body" as claimed by applicant.

5. Claims 14, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pappas as applied to claim 1 above, in view of U.S. Patent No. 3,317,290 to Gentry ("Gentry") (previously cited).

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Pappas teaches all the limitations of claims 14, 15, and 18 except that the sheet has a peripheral rim and is corrugated.

Gentry teaches a heat resistant sheet that has a peripheral rim/flange (20) and is corrugated (14).

Therefore, in regard to claims 14, 15, and 18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the sheet/plate of Pappas to incorporate the sheet of Gentry as the peripheral flange and corrugations serve to form an enlarged chamber for holding a combustible fuel body (see Gentry, col. 2, lines 16-38).

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pappas as applied to claim 1 above, in view of U.S. Patent No. 6,155,451 to Pietruch et al. ("Pietruch") (previously cited).

Pappas teaches all the limitations of claim 19 except that the sheet is dome-shaped.

Pietruch teach a lower sheet (148a) that is dome-shaped (see Figs. 7-8).

Therefore, in regard to claim 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the sheet/plate of Pappas to incorporate the dome shape of Pietruch the dome configuration desirably results in a savings of total wax required (see Pietruch col. 8, lines 55-65).

7. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pappas, as applied to claim 1 above, in view of U.S. Patent No. 2,310,019 to Hamblet ("Hamblet") (previously cited).

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Pappas teaches all the limitations of claims 20 and 21 except for multiple wicks.

As shown in Hamblet, it is well known in the art that candles may have multiple wicks (22).

Therefore, in regard to claims 20 and 21, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the candle of Pappas to incorporate the multiple wicks of Hamblet to provide greater light than a single candle (see Hamblet, col. 2, lines 8-15).

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pappas, as applied to claim 1 above, in view of U.S. Patent No. 5,961,381 to Chambers et al. ("Chambers") (previously cited).

Pappas teaches all the limitations of claim 22 except that the wick support is crimped.

Chambers teaches a candle wick support that is crimped (see Fig. 2 and col. 3, lines 1-17).

Therefore, in regard to claim 22, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the wick support of Pappas to incorporate the crimp of Chambers for the desirable purpose of restricting the amount of fuel flow through the wick support to allow the wick to self-extinguish before the flame approaches the surface of a candle holder (see Abstract of Chambers).

Response to Arguments

9. Applicant's arguments filed 11/5/2004 have been fully considered but they are not persuasive. Applicant argues that in Pappas, the pedestal (112) cannot be considered part of the sheet/plate (114) and amends the claims to recite that the sheet is "substantially flat." The agrees that this pedestal (112) should not be considered part of sheet/plate (114), however, as noted above, applicant's are still not free of the prior art. The plate/sheet (114) shown in Fig. 13 of Pappas is shown as being substantially flat and is considered to meet applicant's claim language.

Applicant also argues that the sheet/plate (114) is not attached or joined to the bottom of the candle. Pappas recites the following in column 5, lines 45-57:

"The candle shown in FIG. 13 has a pedestal 112 attached to a plate 114 mounted to the bottom of the candle 110."

Applicant interprets this language to mean that the pedestal is mounted to the bottom of the candle and not the plate. However, the examiner considers that the plain meaning of this language is that the pedestal is attached to a plate and that the plate is turn mounted to the bottom of the candle. The examiner also notes that Pappas also recites in a prior paragraph that the bottom of the candle rests on a surface, which can be "*an attached plate*, a container floor, a tray or any horizontal surface." (*emphasis added*) (See col. 5, lines 11-15). Therefore, the examiner considers that the plate (114) of Pappas illustrated in Fig. 13 is properly considers to be mounted/joined/attached to the candle body.

The examiner considers that applicant's claims do not read over the prior art of record.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
January 19, 2005


JOSIAH COCKS
PRIMARY EXAMINER
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